SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, DICK KLINGE, ITS BUSINESS AGENT, AND MEL ANDREWS, ITS SECRETARY,

Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE AND R. M. HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF ATLAS AUTO REBUILD,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND BRIEF IN SUPPORT OF PETITION.

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JOHN GEISNESS,
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SUPREME COURT OF THE UNITED STATES

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No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, DICK KLINGE, ITS BUSINESS AGENT, AND MEL ANDREWS, ITS SECRETARY,

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

To the Honorable Supreme Court of the United States:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, Dick Klinge and Mel Andrews, the petitioners herein, pray that a writ of certiorari be issued to review the final decree of the Supreme Court of the State of Washington affirming the

decree of the Superior Court of King County, Washington, permanently enjoining the peaceful picketing of respondents' place of business.

Statement of Matter Involved

The case involves the right of a labor union and its officers to picket under the Fourteenth Amendment to the Federal Constitution.

The respondents, a father and three sons, were operating a copartnership business in the City of Seattle, wherein, among other things, they sold used automobiles (R. 41). They had no hired help, but themselves performed all the work in connection wtih their business (R. 13, 41). One hundred and fifteen other used car dealers in Seattle were bound by a collective bargaining agreement to close their used car lots not later than 6:00 P. M. on all week days and to keep them closed on Saturdays, Sundays and certain specified holidays (R. 13, 74). The respondents sold used cars after 6:00 P. M. and on Saturdays, Sundays and holidays (R. 13, 46). The petitioners, a labor union and its officers peacefully picketed respondents' place of business to persuade them to cease this practice which the union considered detrimental to the welfare of its members (R. 15, 54-55). The picketing was carried on by a single picket who patrolled in front of respondents' premises, bearing a "sandwich" sign upon which was printed in large letters, in both front and rear, the following legend: "Union People Look for (facsimile of Teamsters Union shop card) Union Shop Card" (R. 15, 42, Exh. 2 and 3).

As a result of this picketing respondents' business immediately fell off (R. 15, 45), truck drivers for supply houses refused to deliver parts and materials and in order to obtain the necessary materials respondents were required to call for and transport them in their own truck (R. 15, 42-44).

The trial court specifically found that the "picketing was entirely peaceful, the picket neither threatening nor molesting anyone seeking to enter or leave plaintiffs' (respondents') place of business" (R. 15). (This finding was not overturned by the Supreme Court of Washington). The trial court concluded, however, that there was no "labor dispute" under the laws of the State of Washington (R. 15) and, therefore, the picketing was unlawful, and to enjoin it would not infringe the petitioners' right of freedom of speech as guaranteed by the First and Fourteenth Amendments to the Federal Constitution (R. 16). The decree permanently restrained and enjoined the petitioners from "in any manner picketing the plaintiffs' (respondents') place of business" and awarded respondents damages in the amount of $250.00 and cost (R. 17). Affirming the decree, three judges dissenting, the Supreme Court of Washington held that the picketing, although peaceful, was, nevertheless, "unlawful" because no member of the petitioning union was employed by the respondents and the purpose of the picketing was to force respondents to conform to union standards, hence the Fourteenth Amendment afforded the petitioners no protection (R. 18-32). Said the Court, in part:

> "We do not believe that the United States Supreme Court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal Constitution; nor do we believe that the United States Supreme Court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community (R. 27).
>
> . . . . . .

> In our opinion there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, can not be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that if could be profitably conducted.
>
> We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States" (R. 31).

Judge Robinson, in his dissenting opinion, said that he was unable to reconcile the view of the majority with the holdings of this Court in *American Federation of Labor* v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, and *Cafeteria Employees Union, Local 302*, v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, and pointed out that in the latter case the owners of the cafeteria as in the instant case, conducted their business themselves without the aid of employees, and the purpose of the picketing was to "organize" the cafeteria (R. 32-35).

Jurisdiction

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides, in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * *."

2. The following cases are believed to sustain the jurisdiction of this Court:

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802; etc. v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302*, v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

3. The Supreme Court of the State of Washington is the highest court of the State.[1]

4. The judgment of which review is sought is a final judgment of the Supreme Court of Washington (R. 37-38).

5. The judgment herein sought to be reviewed was filed on July 5, 1949 (R. 37). On the same day the Supreme Court of Washington entered an order staying execution and enforcement of the judgment and fixing the amount of supersedeas and cost bond, to enable your petitioners to apply to this Court for a writ of certiorari (R. 38). The supersedeas and cost bond required was also filed the same day (R. 39).

6. The Federal question of substance which has been decided by the State court is that the constitutional guaranty of freedom of discussion is not infringed by the common law policy of a State which forbids peaceful picketing by labor unions where there is no immediate employer-employee dispute. That decision of the Supreme Court of the State of Washington is squarely in conflict with the decisions of this Court construing the Fourteenth Amendment to the Federal Constitution. (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 208, etc.* v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126).

7. The Federal question was timely raised and considered. Upon the commencement of the action the Su-

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[1] State Constitution, Article IV, Sections 1 and 4, Remington's Revised Statutes of Washington, Volume 1.

perior Court of King County, without notice, issued an order temporarily restraining the petitioners from all picketing and requiring them to show cause why the restraining order should not be continued in force *pendente lite* (R. 5). The petitioners immediately filed a motion to dissolve this temporary restraining order, specifically claiming the protection of the First and Fourteenth Amendments to the Constitution as follows:

> "The above named defendants (petitioners) move the court for an order dissolving the temporary restraining order which was issued herein on the 24th day of February, 1948, on the ground and for the reason that the advertising thereby restrained deprives said defendants of their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 6).

Following a hearing on this motion and the respondents' application for an injunction *pendente lite* that court filed a memorandum decision (R. 90, 97-101) in which it passed upon the constitutional question, denied petitioners' motion and, accordingly, made findings of fact and conclusions of law, which also ruled upon the petitioners' claimed right under the Federal Constitution, in the following language:

> "That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 16).

Thereafter, the cause having come on regularly for trial on the merits before the same judge, the parties, through their counsel, stipulated that the cause be submitted to the court for final judgment on the merits, based on the evidence already taken and the arguments submitted; and further stipulated that respondents have sustained damages in the

amount of $250.00 as a result of the picketing complained of (R. 104). Thereafter the court, having reconsidered the evidence and arguments presented, made and entered a final decree permanently enjoining the petitioners from "in any manner picketing" the respondents' place of business and awarding respondents judgment for damages in the amount of $250.00 (R. 17).

The Supreme Court of Washington, in affirming the trial court's decree, likewise passed upon the petitioners' claimed constitutional right, saying:

> "The controlling question involved in this appeal is whether or not, under the facts of the instant case, the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provisions of the Federal Constitution forbidding the abridgment of freedom of speech (R. 23) * * * The decisions which appellants cite and on which they rely as supporting their contention are the following: *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; *Thornhill v. Alabama*, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736; *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126" (R. 26-27).

and concluding:

> "We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States" (R. 31).

The Question Presented

Is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbid-

ding peaceful picketing by a labor union where there is no immediate employer-employee dispute?

Reasons Relied On for the Allowance of the Writ

The Supreme Court of Washington has decided an important question arising under the First and Fourteenth Amendments to the Constitution of the United States, involving the right of labor unions to make known, through peaceful picketing, the facts of a labor dispute, in a way probably untenable and in conflict with the applicable decisions of this Court in the following cases:

Senn v. *Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;

Thornhill v. *Alabama*, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736;

Carlson v. *California*, 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746;

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers, Local 802 v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

The Supreme Court of Washington has held that peaceful picketing by a labor union is "unlawful" where there is no immediate employer-employee dispute and, being thus unlawful, is not protected by the Fourteenth Amendment. This holding is directly in conflict with the decisions of this Court in *American Federation of Labor* v. *Swing*, *Bakery & Pastry Drivers & Helpers* v. *Wohl*, *and Cafeteria Employees Union* v. *Angelos*, *supra*. The Supreme Court of Washington says:

> "• • • peaceful picketing of an employer's place of business is not protected by the constitutional guar-

anty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union" (R. 26).

In *American Federation of Labor v. Swing, supra,* this Court said:

> "We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.
>
> Such a ban of free communication is inconsistent with the guaranty of freedom of speech. * * * The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state can not exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between empoyers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. The right of free communication can not therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. * * *"

The decree of the Supreme Court of Washington manifestly deprives the petitioners of the right to make known the facts of the dispute between them and respondents, through peaceful picketing, *solely because respondents employ no one in the operation of their copartnership business*

But this was the precise factual situation in *Bakery & Pastry Drivers & Helpers Local 802, etc.* v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, *supra*, and in *Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, *supra*, and this Court in each of these cases applied the doctrine of the *Swing* case, in the *Wohl* case saying:

> "* * * One need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to exercise a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive" (page 774).

and in the *Angelos* case:

> "But, as we have heretofore decided, a state can not exclude workingmen in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him,'" (page 296).

Your petitioners respectfully submit that the writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of Washington and determine whether that court has deprived petitioners of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

SAMUEL B. BASSETT,
JOHN GEISNESS,
Attorneys for Petitioners.

STATE OF WASHINGTON,
County of King, ss:

Samuel B. Bassett, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he has read the foregoing petition and

knows the contents thereof, and that the same is true to the best of his knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true.

SAMUEL B. BASSETT.

Subscribed and sworn to before me this 18th day of August, 1949.

JOHN GEISNESS,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded in law as well as in fact and not interposed for delay and that the case is one in which the prayer of the petitioners should be granted.

SAMUEL B. BASSETT,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, DICK KLINGE, Its Business Agent, and MEL ANDREWS, Its Secretary,

Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, Copartners Doing Business Under the Name and Style of ATLAS AUTO REBUILD,

Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

I

Opinion of the Court Below

The opinion of the Supreme Court of the State of Washington is reported in Volume 133 Washington Decisions 625; 207 P. (2d) 206 (R. 18).

II

Jurisdiction

Jurisdiction is fully covered in the foregoing petition and the statement there made is adopted here by reference.

III

Statement of the Case

A concise statement of the case is set forth in the foregoing petition under the heading "SUMMARY OF MATTER INVOLVED," and, in the interest of brevity, is adopted here by reference.

The other facts relating to the dispute between petitioners and respondents, which we do not consider as controlling, but which were mentioned in the opinions of the courts below, are the following:

The respondents purchased the business in question in June, 1946, at which time it included a gasoline station and a shop for the repair and rebuilding of automobiles (R. 11). Shortly thereafter they added to their business the purchase and sale of used cars (R. 13). The parties from whom the respondents acquired the original business had, during their term of operation, kept on display in a window of the establishment a union shop card issued to them by the petitioning union (R. 11-12). This shop card was made up of a metal sign 11 x 7 inches in size, bearing the insignia of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and stating that "Union Service" was to be had at that establishment (R. 12; Exhibit 1).

When the respondents purchased the business A. E. Hanke, the father of the other three respondents, joined the union (R. 12), and for this reason respondents were

allowed to retain this shop card which they kept on display until this dispute arose (R. 12, 14). On January 27, 1948, when respondents refused to adopt and keep union hours in the sale of used cars, the union removed the shop card and A. E. Hanke thereupon withdrew from the union (R. 14, 61, 65).

The picketing commenced on January 12, 1948, and continued until enjoined by the court on February 24, 1948 (R. 15). The union shop card which was attached to the sign carried by the picket was identical in size, form and legend with that which had been on display in respondents' window (R. 47, 64). The picket talked to respondents' customers (R. 15, 55), but the record does not disclose what he said. He also took down the motor vehicle license numbers of their customers (R. 15).

The respondents enjoyed considerable patronage of members of labor unions (R. 54). Immediately following the picketing respondents' business fell off (R. 15, 45, 54).

The trial court found:

> "That in addition to the use and benefit of said shop card the plaintiffs, during all of the time they operated said business, enjoyed the benefit of advertisements which the defendant Union caused to be printed in 'THE WASHINGTON TEAMSTER'—the official publication of the Teamsters Union, which is published weekly and distributed to all of the members of the International Brotherhood of Teamsters throughout the State of Washington, *and that as a result of the use of said shop card and of said advertising the plaintiffs received a substantial amount of the Union patronage which they otherwise would not have received.*" (Emphasis ours.) (R. 12).

And these findings were not disturbed by the State Supreme Court.

IV

Specifications of Error

1. The State Supreme Court erred in holding that the injunction does not deprive petitioners of the right of freedom of speech guaranteed by the Fourteenth Amendment.

2. The State Supreme Court erred in holding that the constitutional guaranty of freedom of speech is not infringed by the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute.

V

Summary of Argument

A. The decree permanently enjoining the petitioners "from in any manner picketing" respondents' place of business deprives them of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment.

B. The constitutional guaranty of freedom of discussion and communication is infringed by the judicial policy of the State of Washington which forbids peaceful picketing by workingmen where there is no immediate employer-employee dispute.

VI

ARGUMENT

A. The Decree Permanently Enjoining the Petitioners "from in Any Manner Picketing" Respondents' Place of Business Deprives Them of the Right of Freedom of Discussion and Communication Guaranteed by the Fourteenth Amendment.

The picketing enjoined by the decree was admittedly peaceful and free from physical coercion or intimidation and

was conducted for the purpose of inducing the respondents to conduct their used car business in conformity with the established union standards relating to hours and days of work. The Supreme Court of Washington (three judges dissenting) held, however, that the picketing was "unlawful" under the common law of the State because

(1) At the time the picketing was started by petitioners the respondents had no hired help, but themselves did all the work connected with the operation of their business;

(2) No member of respondents' partnership was a member of the union conducting the picketing;

(3) Respondents had no agreement with any union concerning the manner in which their business was to be conducted. Hence, the court concluded that the injunction did not deprive petitioners of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment, saying:

> "In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, can not be restrained from depriving respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.
>
> We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States."

This holding and the reasoning which influenced the Supreme Court of Washington to so hold, we submit, is in conflict with that of this Court in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857. Senn conducted a small business employing one or two journeymen tile layers and one or two helpers, depending upon the amount of work he had contracted to do at the

time. He also worked with the tools of the trade. Neither he nor any of his employees was a member of the union and neither had any contractual relations with the union. The picketing was conducted for the purpose of inducing Senn to unionize his business and execute a union contract. This Court ruled:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*" (Emphasis supplied)

And the reasoning of the Court (Mr. Justice Brandeis speaking) was:

> "The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support, to induce Senn to unionize his shop. There was no effort to induce Senn to do an unlawful thing. There was no violence, no force was applied, no molestation or interference, no coercion. There was only the persuasion incident to publicity. • • •
>
> The unions acted, and had the right to act, as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare *American Steel Foundries* v. *Tri-City Central Trades Council, supra,* (257 U. S. 208, 209). Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial. • • •
>
> There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with another by means of advertisements in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent

upon public favor. To win the patronage of the public each may strive by legal means. * * * It is true that disclosure of the facts of the labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution. Compare *Pennsylvania R. Co. v. United States R. Labor Bd.*, 261 U. S. 72. It is true, also, that disclosure of the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the Constitution. And the diversion of it to a competitor is not an invasion of a constitutional right."

In the instant case the respondents, during all the time they operated their business, enjoyed the use and benefit of the union shop card and the advertising which the union gave their business in the union's weekly publication and, as the trial court found, as a result they received a substantial amount of union patronage which otherwise they would not have obtained (R. 12). Before picketing, the union attempted to induce respondents to observe the union's established hours and days of work in the used car industry, telling them that unless they did agree so to do, the shop card would be withdrawn, the union advertising would cease and their business henceforth would be advertised as non-union (R. 14, 53-54, 61). Under these circumstances, when respondents refused to operate a union shop, the union was justified in resorting to picketing for the purpose of informing union people and the public at large that respondents were no longer operating a union shop. And if, as a result, they lost union patronage the courts should not by injunction attempt to restore and maintain it. The sandwich sign which the picket carried merely asked "Union People Look for the Union Shop Card."

This Court, applying the principles of the *Senn* case, has repeatedly held that such appeal to public opinion through peaceful picketing is protected by the Fourteenth Amendment.

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union, Local 302, v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 62 S. Ct. 126.

In *American Federation of Labor* v. *Swing*, *supra*, the Court said:

> "We are asked to sustain a decree which for purposes of this case asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.
>
> *Such a ban of free communication is inconsistent with the guaranty of freedom of speech.*" (Emphasis supplied.)

The decree which the Supreme Court of Washington affirmed was as unrestricted as that in the *Swing* case. It enjoined all picketing and in so doing deprived petitioners of freedom of speech.

B. The Constitutional Guaranty of Freedom of Discussion and Communication Is Infringed by the Judicial Policy of the State of Washington Which Forbids Peaceful Picketing by Workingmen Where There Is No Immediate Employer-Employee Dispute.

Before this Court decided *American Federation of Labor* v. *Swing*, *supra*, the Supreme Court of Washington had established, in a long line of decisions commencing in 1935

(some of which are: *Safeway Stores* v. *Retail Clerks' Union, Local No. 148*, (1935), 184 Wash. 322, 51 P. (2d) 372; *Adams* v. *Building Service Employees International Union, Local No. 6* (1938), 197 Wash. 242, 84 P. (2d) 1021; *Fornili* v. *Auto Mechanics' Union, Local No. 297* (1939), 200 Wash. 283, 93 P. (2d) 422; *Shively* v. *Garage Employees Local Union No. 44* (1940), 6 Wn. (2d) 560, 107 P. (2d) 354), a judicial policy which forbids peaceful picketing by labor unions in the absence of an immediate employer-employee dispute.

The first case which came before the Supreme Court of Washington, involving the right to peacefully picket, after *American Federation of Labor* v. *Swing*, was *O'Neil* v. *Building Service Employees International Union, Local No. 6* (1941), 9 Wn. (2d) 507, 115 P. (2d) 662. In that case the plaintiff operated two apartment houses with the assistance of her family and without the help of outside employees. The union peacefully picketed the apartment houses in an effort to induce the plaintiff to join the union. Although there was no immediate employer-employee dispute the court, as then constituted, four judges dissenting, held, on the authority of *American Federation of Labor* v. *Swing, supra*, that the peaceful picketing of plaintiff's apartment houses could not be enjoined in view of the Fourteenth Amendment, saying in part:

> "The Constitution of the United States is the supreme law of the land. However much we may disagree with the interpretation of that Constitution by the United States Supreme Court, such interpretation is binding on us."

The next case which came before the Washington Supreme Court, involving the right to picket, was *S & W Fine Foods* v. *Retail Delivery Drivers & Salesmen's Union, Local 353* (1941), 11 Wn. (2d) 262, 118 P. (2d) 962. The union in

that case picketed the plaintiff's warehouse because its salesmen, who were satisfied with their wages, hours and working conditions, had refused to join the union. The court again, one judge dissenting, on the authority of *American Federation of Labor* v. *Swing, supra,* held that the right to peacefully picket was protected by the Fourteenth Amendment. This seemed to be the settled law of the State of Washington until December 22, 1947, when the Supreme Court of Washington handed down its decision in *Gazzam* v. *Building Service Employees International Union, Local 262,* et al., 29 Wn. (2d) 488, 188 P. (2d) 97. In that case the court, as then constituted, four judges dissenting, held that the peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free spech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to organize them. And in so holding the court expressly overruled its two preceding decisions which had adopted the rule of *American Federation of Labor* v. *Swing.*

The decree in the case at bar is affirmed on the authority of the *Gazzam* case, concerning which the majority opinion says:

> "The factual situation in the case before us bears a close resemblance to that which obtained in the recent case of *Gazzam v. Building Service Employees International Union, Local 262,* reported in 29 Wn. (2d) 488, 188 P. (2d) 97. In fact, it seems to be agreed between the parties herein that, unless that case be now overruled, it is controlling of the case at bar. • • •
>
> After analysis and discussion of the cases above cited, this court, in the *Gazzam* case, *supra,* expressly overruled the *O'Neil* and *S & W Fine Foods* cases, *supra,* as being wrong in principle and contrary to the most recent view of a majority of the court. • • •
>
> We now find and here declare that the picketing activity conducted by Local 309 • • • constituted co-

ercion and was therefore unlawful. This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra*."[2]

Thus the Supreme Court of Washington has in effect, ruled that the judicial policy of the State which forbids peaceful picketing where there is no immediate employer-employee dispute does not abridge the Fourteenth Amendment, and this holding is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases, *supra*.

In the *Swing* case this Court said:

"More thorough study of the record and full argument have reduced the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"

Answering this question, the Court said:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' Thornhill v. Alabama, 210 U. S. 88, 105, 84 L. ed. 1093, 1104, 60 S. Ct. 736. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has

[2] On August 5, 1949, the court (Vol. 134, Washington Decisions 34) following a second appeal, entered a final judgment in the *Gazzam* case and we understand that the union has taken steps to petition this Court for a writ of certiorari.

ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209, 66 L. ed. 189, 199, 42 S. Ct. 72, 27 ALR 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case."

In the *Wohl* case this Court, reversing the judgment of the court of Appeals of New York, holding that there was no "labor dispute" within the meaning of the statutes of New York because the respondents employed no one to assist them in conducting their business, said:

"So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not

follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

In the *Angelos* case the plaintiff and his copartners operated a cafeteria, themselves performing all the work pertaining to their business without the assistance of others. The union picketed the cafeteria "in an attempt to organize it." Again reversing the Court of Appeals of New York, which had enjoined the picketing, this Court said:

"In Senn v. Tile Layers Protective Union, 301 U. S. 468, 81 L. ed. 1229, 57 S. Ct. 857, this Court ruled that members of a union might, 'without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' 301 U. S. at 478, 81 L. ed. 1236, 57 S. Ct. 857. Later cases applied the Senn Doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. American Federation of Labor v. Swing, 312 U. S. 321, 85 L. ed. 855, 61 S. Ct. 568; Bakery & P. Drivers & Helpers, I.B.T. v. Wohl, 315 U. S. 769, 86 L. ed. 1178, 62 S. Ct. 816. To be sure the Senn Case related to the employment of 'peaceful picketing and truthful publicity.' 301 U. S. at 482, 81 L. ed. 1238, 57 S. Ct. 857. That the picketing under review was peaceful is not questioned. * * * We have before us a prohibition as unrestricted as that which we found to transgress state power in American Federation of Labor v. Swing, 312 U. S. 321, 85 L. ed. 855, 61 S. Ct. 568, supra. The Court here, as in the Swing Case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have

heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' American Federation of Labor v. Swing, 312 U. S. at 326, 85 L. ed 857, 61 S. Ct. 568."

Respectfully submitted,

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